

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Implementation of Section 34(a)(1) )  
of the Public Utility Holding Company )  
Act of 1935, as added by the )  
Telecommunications Act of 1996 )

GC Docket No. 96-101

To: The Commission

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**REPLY COMMENTS OF  
ENTERGY CORPORATION**

Entergy Corporation, by and through counsel and pursuant to Section 1.415(c) of the Federal Communications Commission's (FCC's or Commission's) Rules (47 C.F.R. Section 1.415(c)(1995)), submits these Reply Comments in response to the Comments filed in the above captioned rulemaking proceeding.

**I. BACKGROUND**

1. By a Notice of Proposed Rulemaking (NPRM) adopted and released April 25, 1996, the FCC has requested comment on its proposals for implementation of Section 34(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA), as amended by the Telecommunications Act of 1996 (Pub. L. No. 104-104, 110 Stat. 56 (1996) (the Act)). In the NPRM, the FCC sought comment on a number of issues relating to Section 34(a)(1), including: (1) the

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appropriate scope of public comment and FCC review in the application process, (2) multi-party filing under one application, (3) service of ETC applications and notification of ETC determination, (4) the period for review of applications, and (5) ETC notification requirements in the event of a change in the circumstances which underlie ETC status.

2. Entergy's Comments in this proceeding generally supported the FCC's proposals as "consistent with the deregulatory nature of the Telecommunications Act." Entergy at 4. At the same time, Entergy requested that the Commission provide guidance regarding the scope and application of the term "exclusively" as used in the proposed rules. Entergy hereby reiterates the positions set forth in its earlier filed Comments and responds to the Comments filed by other parties in this proceeding.

## **II. SCOPE OF PUBLIC COMMENT/FCC INQUIRY**

3. Both the scope of public comment and FCC inquiry on ETC applications, as set forth in the proposed rules, are appropriate and Entergy urges the Commission to adopt its proposals in this regard as final rules. Entergy is, accordingly, in agreement with those Comments that support the Commission's proposals concerning the scope of comment and inquiry. Cinergy at 1;

Southern at 5-6. Entergy opposes those Comments which request that the Commission include additional ancillary or irrelevant issues in the ETC application review process. Several Commenters have suggested that the proposed rules should provide for a determination that ETC status will be in the public interest as a condition precedent to the grant of ETC applications. American Communications Services, Inc. (ACSI) at 10; Cincinnati Bell Telephone (CBT) at 4. As the FCC has previously noted, Congress has already made a determination that the creation of ETCs is in the public interest. NPRM at para. 7. Entergy respectfully submits that the application process was not intended as an opportunity to revisit this issue, as is made plain by the simple and straightforward statutory terms for FCC determination of ETC status set forth in Section 34(a)(1). Entergy accordingly urges the FCC to disregard these proposals.

4. Certain parties have also suggested in their Comments that, in essence, the FCC should graft the pole access provisions of the Act onto the ETC application process. ACSI at 8-9; Association for Local Telephone Service (ALTS) at 4; CBT at 5. Such proposals are beyond the contemplated scope of the ETC application process and have no real bearing on ETC status per se. The referenced pole access provisions are the subject of a separate part of the Act, Section 703, and of a distinct FCC rule making proceeding, CC Docket No. 96-98. Had it been Congress'

intent that ETC status be conditioned on compliance with Section 224, this would be evident in the text of Section 34(a)(1). The FCC has no statutory authority to impose the conditions suggested by these parties.

5. Further, it is inconsistent with the purpose of Section 34 for pole access issues to impact ETC status. The Act is intended to permit registered holding companies, through investment in ETCs, to become competitive participants in telecommunications markets. The subject proposals would impose conditions upon the participation by ETCs and their affiliates in the telecommunications services market that are not faced by other utilities. Accordingly, these proposals would be inequitable in application and would frustrate Congress' purpose in adopting the ETC provisions. The nondiscriminatory access provisions in the Act should not have any greater or lesser application to a party simply because of its status as an ETC.

6. Also raised by several Commenters is the issue of state involvement in the ETC application review process and whether compliance with state regulatory requirements under Section 34 or otherwise, should be demonstrated as a condition of ETC status. CBT at 3-4; City of New Orleans at 7-8. In response to these Comments, Entergy submits that the Act already provides for state oversight of certain aspects of ETCs and their affiliates

independent of the determination of ETC status and these provisions are sufficient. Indeed, the drafting of Section 34 reflects a careful and deft balancing of the pro-competitive purpose of Section 34 with safeguards against cross-subsidization and protection of ratepayer interests. Significantly, although Section 34(a)(1) references the Securities and Exchange Commission (requiring notification by the FCC following determination of ETC status), that section contains no mention whatever of preapproval by state regulatory agencies as an element of the application review process. The FCC obviously does not have the discretion to rewrite Section 34(a)(1). Accordingly, proposals such as these which are clearly outside of the scope of that section are properly disregarded by the Commission in this proceeding.

### **III. DISCLOSURE/REPORTING REQUIREMENTS**

7. BellSouth and Southwestern Bell Telephone Company (SWBT) both urge the Commission to adopt more stringent requirements regarding an ETC applicant's description of planned activities than is set forth in the proposed rules. BellSouth at 13-14; SWBT at 2. BellSouth urges the Commission to require that ETCs describe facilities to be used to provide qualifying services and SWBT seeks to have ETCs provide a listing and

description of services and the locations where they will be rendered. Id.

8. Entergy agrees with the Commission's vision of a more limited yet adequate description of business activities, as set forth in the NPRM, as a proper implementation of the pro-competitive purpose underlying Section 34. The proposed rules provide for sufficient disclosure to ensure that registered holding company diversification is confined to the appropriate activities, without unduly constraining ETCs in their ability to plan and execute business strategy. The rules require service of ETC applications upon affected state commissions, a measure which is sufficient to address the concerns raised by SWBT in this regard. Public disclosure of excessive details concerning business plans is not warranted and would be anti-competitive in practice.

9. The same is true of BellSouth's proposal for periodic reports by ETCs of the status of their business ventures. BellSouth at 8-9. This proposal of ongoing ETC reporting obligations is beyond the scope of this rulemaking and should be disregarded on that basis. Furthermore, Section 34 already contains potentially rigorous reporting and audit requirements for ETCs and their affiliates and no further provisions are warranted in Entergy's view.

#### **IV. DEFINITION OF "ENGAGED"**

10. Entergy opposes the suggestion made by BellSouth that ETCs should be required within a reasonable period of time to engage in activities identified in their applications. BellSouth at 11-12. In Entergy's view, the Commission's earlier articulated interpretation of the "to be engaged" in qualifying activities<sup>1/</sup> is appropriate. Under that interpretation, an applicant is so engaged if it is "established for the exclusive purpose of providing such services at the time it files its application." Id. This approach is a realistic means of ensuring that ETCs are not subject to unnecessarily restrictive requirements in the execution of their business plans.

#### **V. REGULATORY PARITY**

11. As a final matter, Entergy takes issue with suggestions in the comments that ETCs and local exchange carriers (LECs) should receive similar or identical regulatory treatment in certain respects. BellSouth at 5; CBT at 3, fn. 10. While it generally agrees with a deregulatory approach to the telecommunications services market, Entergy cannot accept

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<sup>1/</sup> In the Matter of Application of Entergy Technology Company for Determination of Exempt Telecommunications Company Status; FCC File No. ETC 96-2; adopted April 9, 1996, released April 12, 1996 (Entergy Order), at para. 30.

BellSouth's comparison of ETCs and LECs in regard to regulatory parity. Furthermore, Entergy strongly disagrees with CBT's proposal that ETCs and their affiliates should be subject to accounting safeguards applicable to LECs. ETC's are, or will be, new entrants to the market for telecommunications services and their market positions can be expected to contrast sharply from those of the LECs. These suggestions, furthermore, far exceed the scope of this rulemaking and Entergy urges the Commission to dismiss them.

## **VI. CONCLUSION**

12. Entergy continues to generally support the FCC's proposals with regard to implementation of Section 34(a)(1) and urges the Commission not to diverge from its course. Although a number of parties have proposed changes which vary substantially from the Commission's proposals, the statutory mandate and the policy goals underlying Section 34(a)(1) will be well served by the adoption of the proposed rules in their current format, subject to the relatively minor clarification proposed by Entergy in its Comments.

**WHEREFORE THE PREMISES CONSIDERED,** Entergy Corporation respectfully requests that the Commission act upon its Notice of



Proposed Rulemaking in a manner consistent with the views  
expressed herein.

Respectfully submitted,

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